

**City of Carlsbad**  
**Citizens' Committee to Study the Flower Fields and Strawberry Fields Area**  
**Summary Notes of Meeting #4**  
**June 15, 2006, 9 a.m. to 12 p.m.,**  
**City of Carlsbad, 1635 Faraday Avenue, Room 173B**

***Present:***

**Committee members:** (\*non-voting members)

<i>Pete Aadland</i>	<i>Bob Garcin</i>	<i>Leslea Meyerhoff</i>
<i>Jill Agosti</i>	<i>Courtney Heineman*</i>	<i>Robert Morgan</i>
<i>Jennifer Benner</i>	<i>Gary Hill</i>	<i>Eric Munoz (chair)</i>
<i>Chris Calkins*</i>	<i>Mark Johnson</i>	<i>Peder Norby</i>
<i>Nancy Calverley*</i>	<i>Pat Kurth</i>	<i>Laura Means Pope</i>
<i>Marvin Cap</i>	<i>Keith Lewinger</i>	<i>Marvin Sippel*</i>
<i>Claudia Carrillo*</i>	<i>Cary Manning</i>	<i>Seth Schulberg</i>
<i>Bill Dominguez</i>	<i>Len Martyns</i>	<i>Mark Winkler</i>
<i>Farrah Douglas</i>	<i>Kip McBane (vice-chair)</i>	<i>Heidi Willes</i>
<i>Vern Farrow</i>	<i>Gina McBride</i>	

***Absent:***

*Daniel Swiger*

**City of Carlsbad Staff:**

*Gary Barberio – Principal Planner*  
*Paul Edmonson – Assistant City Attorney*  
*Cynthia Haas – Economic and Real Estate Manager*  
*Sandra Holder – Community Development Director*  
*Bob Johnson – Deputy City Engineer, Transportation*  
*Barbara Nedros - Administrative Secretary*  
*Mark Steyaert – Park Development Manager*  
*Courtney Enriquez – Management Intern*

*Michael Holzmiller – Consultant to City*

**Special Counsel:**

*Jim Lough of McDougal, Love, Eckis, Smith, Boehmer & Foley, a law firm that represents many cities.*

**Facilitators from National Conflict Resolution Center:**

*Barbara Filner*  
*Robin Seigle*  
*Christina Simokat, assistant*

*8 public and 2 press*

## **I. Roll Call**

Summary Notes approved

Amendment to Agenda was to allow more time for questions of each initiative sponsor. (20 minutes).

## **II. Public Comment**

None

## **III. Additional Initiative Question and Answer Sessions**

Chair Munoz requested that today's focus would be on questions, rather than statements from the Committee. Responses to the Committee's previously submitted questions will be addressed first, and, if time allows, any follow-up questions.

Chair suggested that the initiative representatives respond to the questions only, not statements from the questions previously submitted.

Chair read a letter from Ron Alvarez, delivered by Michael Bovenzi. Mr. Alvarez stated that there was not enough time in the agenda to respond adequately. Chair will ask him to respond in writing by noon on Monday, June 19. Mr. Bovenzi said he had not been given enough time to adequately prepare and he will submit his responses in writing by the same deadline. He wants to respond to the questions that were directed at him specifically.

20 minutes was allowed for responses to questions from each initiative.

Questions have been regrouped into topics by the facilitators to help organize the meeting in a more time efficient manner.

Legal questions submitted by the Committee and San Diego Gas & Electric Company (SDG&E) will be answered by Mr. Lough later in the agenda.

Chair emphasized that issues should be discussed in a respectful manner.

### **a. C.C.U.PP. represented by Ramona Finnila (using Initiative questions in the original order)**

1. The yellow area is the planning area. The 48.26 acre area is designated for tourism. Cramming the area against the freeway might not be the best alignment. We suggest that maybe it could be slightly reoriented so there could be a little flexibility depending on the use.
2. The residential area was supposed to be north of Cannon.
3. The previous process involved 600 people but was interrupted by the Save the Fields initiative.
4. We were not thinking of single family homes but smaller mixed use housing. But we have no plan yet.

5. There are many cities that have 9 to 5 civic centers surrounded by residential areas.  
Examples, Frank Lloyd Wright Civic Center in Marin County has a lot of infill development; Scottsdale....
6. A master plan would take years and there would be time for the agriculture leases to expire.  
We support urban agriculture, example, Santa Barbara.
- (1.) Businesses are very concerned about who will be around their businesses day and night.  
We think the businesses would be enhanced.
- (3.) An agriculture feasibility study is possible, but who pays for it?
- (4.) If either Initiative A or C wins, that will have to be addressed.
- (5.) I don't know.

Additional:

Q: The other tourist businesses along the freeway (hotels and other) make it okay. Why wouldn't the proposed tourist commercial area work in its present configuration?

A: It could, but we thought there should be some flexibility.

Q: Is the proposal to reorient to escape the power line easement?

A: It could do that.

Q: Who will take care of the farm workers?

A: It is usually government who takes care of housing for the poor. We also have to take care of the poor workers in the hotel and restaurant industries. Some of the growers have provided housing, which is not so in the other industries. The City of Carlsbad, against objections in 1992, has an affordable housing inclusionary policy. The farm workers don't always live in Carlsbad year round and may have transportation and go wherever they want to go.

**c. City, represented by Mayor Bud Lewis and Councilman Matt Hall (using Initiative questions in the original order)**

Mayor Lewis emphasized that the reason he proposed this initiative was because people who were signing the "Save the Fields" initiative did not understand what it would do. People are "ticked off" about growth and traffic. They don't understand how to protect open space. We want to protect the city the best way we can and would have liked to use the "normal" process in which a proposal is made to the City, wherein citizens can make comments, then it goes through the Planning Commission to the City Council for review. It also goes out for an environmental impact review.

We want to protect the city and make it easier for the public to know what is being voted on. We are also concerned about not “taking” from private landowners, and being fair. The alternate uses for the open space area are listed in our initiative.

Historically, we wanted to have all open space, but the City Attorney advised that it would be costly to the City because there would be too much “taking” from private landowners.

A civic center must be voted on if it is in the open space area.

If you go with the agricultural zoning you are not sure what you are getting. People don’t want more residential development

We assumed Carlitas was going to sell the golf course parcels to Lennar.

### Hall

1. Land use does not work well by the ballot box. Once the initiative is adopted, it can’t be changed. He suggested that an advisory vote from a committee works better.
2. 5 or 6
3. The City prides itself on giving information to the community. People are looking for certain details, but they express their requests broadly. It may take thousands of hours of city staff time, so we asked them for detailed descriptions of what they wanted.
4. It was understood that Carlitas was selling the land. The citizens are more interested in passive Open Space.
5. City measure allows a number of open space usages and allows modification if there is a taking of property rights.
6. City doesn’t require agriculture, it only promotes it. No subsidies for agriculture included.
7. (Lewis) It is \$1.29 for recycled water for you isn’t it? (Calkins) Really the city’s policies are set for urban use of water, not to promote agriculture. The city’s initiative doesn’t address this.
8. The city’s measure allows a vote for a Civic Center or not.
9. No. It allows for farming and other uses.
10. It will explore grant programs. It doesn’t include more financial support from the city.
11. All the other sites are designated open space and the last thing the people want is more housing. It only allows a vote on a Civic Center. It could be a chance to create a great community gathering space.

Chair asked if the committee wanted to extend the city's time by 5 minutes. The vote was yes.

13. and 14. People do not want this development on the lagoon.

#### Additional Questions for C.C.U.P.P.

Q. Will your initiative keep this area in agriculture?

A: As long as the current leases are maintained with SDG&E and as long as it's economically viable. SDG&E decides what happens when the lease is up.

Q: Who determines if it is viable?

A: That depends on which initiative wins.

Q: Is a community garden a possibility?

A: Carlsbad currently has one. It's a good concept, but it isn't economically feasible for that section of the city, we haven't ruled it out. We know people want more of it.

Q: Is your group still collecting signatures? Will you get it on the ballot?

A: We still have time. We did not use paid signature gatherers. It's a slow process.

Chair proposes an agenda change to expand the legal presentation to 30 minutes. Also there is one member of public who requests a comment period. The matrix subcommittee will have a slightly shortened period. No objections voiced.

#### **IV. James Lough, special counsel**

His roles are to:

- 1) advise the Carlsbad City Council, and
- 2) advise this Committee.

#### **Takings Law: overview**

There are 2 types:

- 1) Physical invasions where a city takes over and doesn't allow development. Not the situation here.
- 2) Regulatory taking
  - Facial attack: violating a constitutional amendment. None of these initiatives fall here.
  - As applied: is relevant here. SDG&E sees this as an "as applied" taking.
    - 3 part test:
      - economic impact
      - owners' reasonable investment-backed expectations of value (might be raised here)
      - character of the governmental action – raises issues of motives

In the Supreme Court, regulatory takings are determined on a case-by-case basis. The results of litigation to challenge a city's taking of property run the gamut. I haven't seen appraisals yet so I can't say, but typically this is a fight by the experts.

The League of California Cities has a "takings project". Their view is if more than 60% of the value is taken, it needs to be looked at carefully.

### **Land Use Issues**

- All 3 initiatives propose General Plan amendments. You must have vertical and internal consistencies. There are not a lot of serious problems with any of these initiatives. Zoning becomes the issue.
- Public initiatives are the drafting of legislation. They must be the same as if the City Council passed it, except that they are not subject to CEQA and public hearings, but they will be inspected closely. But everything requires Coastal Commission approval and they will not look at anything ahead of being filed. They may have a hard time with taking out the visitor service, or they may not.
- You can't supersede the Public Utilities Commission either.
- Another thought is pesticide use on or near public trails. Regulations will only get stricter.
- An initiative cannot direct future legislative acts of the City Council in a way that will tie their hands. 3.12 of the Save the Fields might be a problem but I can't give a definitive answer.

### **Referring to the Legal Questions handout:**

#### Save the Fields

1. The question is will these initiatives result in a diminution in land value and no reasonable economic use. But you can't tell that right now. If agriculture becomes untenable in the future, then it may be a "taking." Gateway does not require housing but it allows it. It is a "policy," not a project.
2. I don't think the council would be required to do anything. It is allowed to, but not required.
3. "Practicable" generally means reasonableness. It is generally defined and reviewed on a case-by-case basis.
4. Yes, it's legally significant. The Coastal Commission will have decision-making power.
5. It's a common standard; maybe 25% of the evidence.
6. Same.

7. No. Developers can vest their rights by filing an application. The City can enter into an agreement to freeze development. Two of the initiatives have “out” clauses. The general standard: if there is a building permit or if they have expended substantial money to implement it, then there can be a “vested right” issue. There is certainty in the process once a complete application is on file.

#### General

1. The law moves in this area, but it will be moving toward the property owner. Again the standard is “investment backed expectations.” The court will look at the circumstances and what would a “reasonable person” expect. Law in this area changes.
2. The City has to pay and it will affect taxpayers
3. If all three pass, the one with the highest number of votes will win.
4. I can’t guess until we know the value of expenditures. For vested property rights, you need to establish the “diminution of value.”
8. That was a rather unique case.
11. The initiatives only affect the properties in question. They do not set precedent.
12. I don’t think you can make the regulation retroactive. That usually doesn’t happen. But I don’t think that affects the whole initiative.
14. Don’t know.
15. Cities can refuse to put something on the ballot. They can refuse to accept the results. But they are difficult challenges. Property owners probably can’t keep these off the ballot. They usually challenge afterwards: on procedural grounds or “as applied”. The actual legal process would be about 2 ½ years.

His perspective: Citizen's groups allow a council to "punt" a difficult, long-term issue, but the downside is there are usually defects in the drafting. City Councils are not equipped to make decisions about "takings" cases, which affect the "Save the Fields" and the City's initiatives. Requires expert opinions. Having a mini trial might be a way around that.

Q: Who is liable in a "takings" case? The taxpayer?

A: Yes. Though most "takings" cases result in a defense verdict.

Chair asked for Mr Lough's responses in writing by Tuesday, June 20, if possible, and please include a list of all agencies that have pre-emptive jurisdiction.

A: Yes, for example, RWQCB, PUC, CCC, Dept. of Toxic Control. I will include that.

Q: Are the courts more liberal in the interpretation of public initiatives?

A: A little.

Q: There was reference to a "fatal flaw"?

A: There may be a problem if the petition wasn't circulated in Spanish and English. The law may change that way soon, or it may not. But there's nothing we can do about that right now.

## **V. Public Comment**

**Dan Conway:** A procedural suggestion for the committee. Public comment was on the agenda at the beginning of the meeting. This is not a very user-friendly public comment period. It would be more useful if the public can make a comment at the end of each section, after we've heard the information presented, before you move on to another subject.

Chair notes the future agenda may not accommodate that but we will accept written comments.

## **VI. Matrix presentation, presented by Seth Schulberg**

The Subcommittee agreed fairly easily on everything and represented the opinions of a biologist, a planner, a property owner and a concerned citizen.

The end is technical analysis. The issues analysis can be added to. They tried to reduce the wording so the voter can understand more easily.

Refer to the matrix handout. Refer to handout on excess dwelling units.

Q: In the Gateway initiative, for excess dwelling units, can we change from yes to maybe?

A: That's a good point.



Q: What is allowed under agriculture for the “Save the Fields” initiative? Will there not be trails? I don’t see anything that precludes it.

A: The subcommittee didn’t see anything in the “Save the Fields” initiative that would allow general public access. Since we didn’t see anything that allows it specifically, we assumed it wasn’t there.

Holzmiller adds that the property owner does not have to allow access, unless there is an easement. The property owner can put up a fence and not allow it at any time, or they could allow an easement.

Q: So the City could negotiate those easements later?

A: (Holzmiller) Yes, but if it isn’t included in the initiative it could be difficult. It’s not guaranteed.

A: We can’t examine the motivations of the initiative creators.

Q: Since the public wants to know about housing and development, can we put in a column about what is allowed in each initiative?

Chair asked the Committee to restrict questions to developing this as a tool.

Q: I’d like to see HMP added.

Q: We owe it to the public to let them know that the Flower (ranunculus) Fields were never in danger. I’d like to see the name of that row changed and moved to the top to reflect that.

Q: We need a row for recreation vs trails.

Q: We need it spelled out how much open space, how many acres, in each initiative.  
(Holzmiller) This is in the technical section.

Q: We may want to change the sequence of the items.

Q: Commercial use in each isn’t addressed. It should be made obvious.

Q: We need a column for a “no initiative” option. There are 4 choices not 3.

Q: “Public benefits” is a problem because one person’s benefits are not the same to all. We need something that says “Uses”.

Q: The matrix should be unbiased.

Q: How will this information be disseminated to the public?

Written comments will be coming to the committee from the “Save the Fields” group and from Mr. Lough and we should read the open space section of the notebook, and the information on the I-5 widening.

Q: Are we going to hear from Mr. Alvarez and Mr. Bovenzi in person?

A: (Chair) Everyone was given an equal opportunity and they responded in the way they did.

Q: Can we receive written responses from all the initiatives?

Q: We’ve never heard from the actual farmers.

A: (Chair) We can hear from Mr. Larson if we need to. He said he would be available.

Q: Can we get examples from other places in the state about what the allowable uses might be in an Agricultural Zone?

A: Ventura, Santa Barbara and Marin Counties will be your best bets.

Q: Can we get Mr. Lough to respond in writing to the questions from SDG&E?

Q: Can we get an assessment of the impact of changes to the Palomar Airport?